

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

DEL MONTE FRESH PRODUCE N.A.,)
INC., dba DEL MONTE FRESH)
PRODUCE CO., a Delaware corporation,)
)
 Plaintiff,) Civil Case No. 07-1496-KI
)
 vs.) OPINION AND ORDER
)
H.J. HEINZ COMPANY, dba)
TRUESOUPS,)
)
 Defendant.)
_____)

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KING, Judge:

Before the court is Plaintiff's Motion to Strike (#15). I grant the motion for the following reasons.

DISCUSSION

Del Monte Fresh Produce N.A., Inc. ("Del Monte") contracted to provide perishable agricultural commodities to defendant H.J. Heinz Company ("Heinz"). Del Monte claims it was not fully paid and alleges claims for breach of contract and a statutory lien under the Perishable Agricultural Commodities Act.

Heinz alleges counterclaims for breach of contract and breach of warranties. In the First Amended Answer, Heinz includes allegations concerning a raid by the United States Immigration and Customs Enforcement at Del Monte's facility at the time of contract performance. Heinz claims that the underproduction of produce and delivery of contaminated produce by Del Monte was attributable to the raid. Heinz also alleges the affirmative defense of unclean hands, based on information and belief that Del Monte used unlawful labor in attempting to perform its contractual obligations.

Del Monte moves to strike Heinz's affirmative defense of unclean hands. Del Monte's claims are legal causes of action. Consequently, the defense of unclean hands, an equitable

doctrine, has no application. Alston v. United States, Civ. A 02-1259, 2004 WL 764784, at *5 (D. Pa. Mar. 31, 2004).¹ Heinz suggests that I substitute the legally analogous doctrine of *in pari delicto*. That doctrine, however, is applied when both parties are engaged together in the wrongful conduct. Feld and Sons, Inc. v. Pechner, Dorman, Wolff, Rounick, and Cabot, 458 A.2d 545, 548 (Pa. Super Ct. 1983) (counsel and clients worked together to present perjured testimony and to attempt to bribe witnesses in a hearing before the National Labor Relations Board). No one claims that Del Monte and Heinz engaged in wrongful conduct together. The doctrine of *in pari delicto* does not apply here, even if pleaded. Accordingly, I will strike the affirmative defense of unclean hands and decline to substitute the other defense.

Del Monte also moves to strike in Heinz' counterclaims several paragraphs which describe the immigration raid. Heinz argues that the raid is relevant because it shows that Del Monte had fewer and less experienced employees and was thus unable to fulfill Heinz's orders and, in the partial deliveries, delivered produce contaminated with foreign materials.

I agree with Del Monte that the issues in the counterclaims are whether Del Monte fulfilled the contracts with produce that met the express and implied warranty conditions. If Del Monte failed to meet its obligations, the reason why is not relevant. Federal Rule of Civil Procedure 12(f) allows the court to strike from a pleading any "redundant, immaterial, impertinent, or scandalous matter." I conclude that the allegations concerning the immigration raid are immaterial, at best, and strike them as specifically listed below.

¹ The parties dispute whether Florida or Pennsylvania law applies. Neither has noted any differences in those jurisdictions concerning these questions. Without deciding the issue, I will rely on Pennsylvania law, as proposed by Heinz.

CONCLUSION

Plaintiff's Motion to Strike (#15) is granted. I strike from the First Amended Answer the affirmative defense of unclean hands; paragraphs 32, 33, and 34 in their entirety; the phrase "following the ICE raid directly and" from paragraph 36; and the phrase "and by failing to comply with federal immigration law" from paragraph 42.

IT IS SO ORDERED.

Dated this 29th day of February, 2008.

/s/ Garr M. King
Garr M. King
United States District Judge